

**CITY OF SANTA FE**

**"REQUEST FOR PROPOSALS"**

**ENGINEERING DESIGN SERVICES  
DOWNTOWN TRANSIT CENTER -  
SHERIDAN IMPROVEMENTS**

**RFP # '14/39/P**

**PROPOSAL DUE:**

**May 22, 2014  
2:00 P.M.  
PURCHASING OFFICE  
CITY OF SANTA FE  
2651 SIRINGO ROAD  
BUILDING "H" SANTA FE,  
NEW MEXICO 87505**

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### Exhibits:

1. Boilerplate Agreement between Owner and Engineer
2. City of Santa Fe Living Wage summary
3. Federal Transit Administration Required Contract Clauses
4. Schematic Plan Illustrations
5. Schematic Scale Plan
6. Survey
7. Schematic Plan Preliminary (sheet C-102)
8. 2009 ADA Ramp Construction Plans

Note: The Request for Proposal (RFP) can be accessed on the City of Santa Fe's Web Page [www.santafenm.gov](http://www.santafenm.gov); pull down menu under Business, then select Bids and RFPs. The above listed Exhibits to the RFP are available as e-files from Mary MacDonald, phone # 505-955-5934 or e-mail [memaconnald@santafenm.gov](mailto:memaconnald@santafenm.gov). Exhibit 1, 2, and 3 are on the webpage.

**REQUEST FOR PROPOSALS**

**PROPOSAL NUMBER '14/39/P**

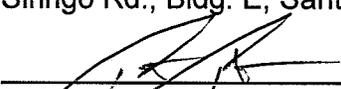
Proposals will be received by the City of Santa Fe and shall be delivered to the City of Santa Fe Purchasing Office, 2651 Siringo Road Building "H" Santa Fe, New Mexico 87505 **until 2:00 P.M. local prevailing time, May 22, 2014.** Any proposal received after this deadline will not be considered. This proposal is for the purpose of procuring professional services for the following:

**ENGINEERING DESIGN SERVICES  
DOWNTOWN TRANSIT CENTER - SHERIDAN IMPROVEMENTS**

The proponent's attention is directed to the fact that all applicable Federal Laws, State Laws, Municipal Ordinances, and the rules and regulations of all authorities having jurisdiction over said item shall apply to the proposal throughout, and they will be deemed to be included in the proposal document the same as though herein written out in full.

The City of Santa Fe is an Equal Opportunity Employer and all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation or national origin. The successful proponent will be required to conform to the Equal Opportunity Employment and Federal Transit Administration regulations. No local preference will be applied to the evaluation of the proposals.

Proposals may be held for sixty (60) days subject to action by the City. The City reserves the right to reject any of all proposals in part or in whole. Proposal packets are available by contacting: Mary MacDonald, City of Santa Fe, Facilities Division, 2651 Siringo Rd., Bldg. E, Santa Fe, New Mexico, 87505, phone (505) 955-5934.

  
\_\_\_\_\_  
Robert Rodarte, Purchasing Director,

Received by the Santa Fe New Mexican Newspaper on: 04/16/14  
To be published on: 04/22/14

Received by the Albuquerque Journal Newspaper on: 04/16/14  
To be published on: 04/22/14

## PROPOSAL SCHEDULE

### RFP # '14/39/P

- |     |                                                   |                                                                                                                                                             |
|-----|---------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.  | Advertisement                                     | April 22, 2014                                                                                                                                              |
| 2.  | Issuance of RFP'S                                 | April 22, 2014                                                                                                                                              |
| 3.  | Pre-proposal Meeting                              | May 1, 2014<br>10:00 a.m.<br>Conference Room at<br>Facilities Division<br>2651 Siringo Rd., Bldg. E,<br>Santa Fe, NM 87505                                  |
| 4.  | Receipt of proposals                              | May 22, 2014, 2014<br>2:00 p.m. local prevailing time.<br>Purchasing Office 2651<br>Siringo Road Bldg., "H"<br>Santa Fe, New Mexico<br>87505 (505) 955-5711 |
| 5.  | Evaluation of proposals                           | June 2, 2014                                                                                                                                                |
| 6.  | Interviews (If Necessary)                         | June 9, 2014                                                                                                                                                |
| 7.  | Fee/Schedule Negotiation                          | June 11, 2014                                                                                                                                               |
| 8.  | Recommendation of award<br>Public Works Committee | June 23, 2014                                                                                                                                               |
| 9.  | Recommendation of award<br>to Finance Committee   | June 30, 2014                                                                                                                                               |
| 10. | Recommendation of award<br>to City Council        | July 9, 2014                                                                                                                                                |

**DATES OF CONSIDERATION BY PUBLIC WORKS COMMITTEE, FINANCE COMMITTEE AND CITY COUNCIL ARE TENTATIVE AND SUBJECT TO CHANGE WITHOUT NOTICE.**

## **INFORMATION FOR PROPONENTS**

### **1. RECEIPT OF PROPOSALS**

The City of Santa Fe (herein called "City"), invites firms to submit seven copies of the proposal. Proposals will be received by the Purchasing Office, until 2:00 p.m. local prevailing time, May 22, 2014.

The packets shall be submitted and addressed to the Purchasing Office, at 2651 Siringo Road Bldg. "H" Santa Fe, New Mexico 87505. No late proposals will be accepted whether hand delivered, mailed or special delivery. Do not rely on "overnight delivery" without including some lead-time. "Overnight delivery" will be determined to be non-responsive if delivered late, no matter whose fault it was. It is recommended that extra days be included in the anticipated delivery date to ensure delivery is timely. The Purchasing Office is closed 12:00 p.m. to 1:00 p.m. The outside of the envelope should clearly indicate the following information:

Proposal number: '14/39/P

Title of the proposal: Engineering Design Services –  
Downtown Transit Center - Sheridan Improvements

Name and address of the proponent:

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Any proposal received after the time and date specified shall not be considered. No proposing firm may withdraw a proposal within 60 days after the actual date of the opening thereof.

### **2. PREPARATION OF PROPOSAL**

Vendors shall comply with all instructions and provide all the information requested. Failure to do so may disqualify your proposal. All information shall be given in ink or typewritten. Any corrections shall be initialed in ink by the person signing the proposal.

This request for proposal may be canceled or any and all proposals may be rejected in whole or in part, whenever the City of Santa Fe determines it is in the best interest of the city.

### **3. ADDENDA AND INTERPRETATIONS**

No oral interpretation of the meaning of any section of the proposal documents will be binding. Oral communications are permitted in order to make an assessment of the need for an addendum. Any questions concerning the proposal must be addressed prior to the date set for receipt of proposal. Every request for such interpretations shall be in writing addressed to: Purchasing Officer, 2651 Siringo

shall be in writing addressed to: Purchasing Officer, 2651 Siringo Road Bldg. "H", Santa Fe, NM 87505 and be given consideration must be received at least five (5) days prior to the date set for the receiving of proposals.

Any and all such interpretations and any supplemental instruction will be in the form of written addenda to the RFP, which if issued, will be delivered to all prospective firms not later than three days prior to the date fixed for the receipt of the proposals. Failure of any proposing firm to receive any such addenda or interpretations shall not relieve such firm from any obligation under their proposal as submitted. All addenda so issued shall become part of the contract documents.

The City reserves the right to not comply with these time frames if a critical addendum is required or if the proposal deadline needs to be extended due to a critical reason in the best interest of the City of Santa Fe.

#### **4. LAWS AND REGULATIONS**

The proposing firm's attention is directed to the fact that all applicable Federal Laws, State Laws, Municipal Ordinances, and the rules and regulations of all authorities having jurisdiction over said item shall apply to the contract throughout. They will be deemed to be included in the contract the same as though herein written out in full.

#### **5. METHOD OF AWARD**

The proposal is to be awarded based on qualified proposals as per the enclosed rating system and at the discretion and consideration of the governing body of the City of Santa Fe. The selection committee may interview the top three rated proponents; however, contracts may be awarded without such interviews. At its discretion the city reserves the right to alter the membership or size of the selection committee. The City reserves the right to change the number of firms interviewed.

#### **6. COMPLIANCE WITH CITY'S MINIMUM WAGE RATE ORDINANCE (LIVING WAGE ORDINANCE)**

A summary of the City of Santa Fe Ordinance No. 2003-8, passed by the Santa Fe City Council on February 26, 2003 is attached (Exhibit 2). The proponent or bidder will be required to submit the proposal or bid such that it complies with the ordinance to the extent applicable. The recommended Contractor will be required to comply with the ordinance to the extent applicable, as well as any subsequent changes to the Ordinance throughout the term of this contract.

**7. PROTESTS AND RESOLUTIONS PROCEDURES**

Any proponent, offeror, or contractor who is aggrieved in connection with a procurement may protest to the Purchasing Officer. The protest must be in writing and submitted within fifteen (15) days of the City's final evaluation. Requirements regarding protest and resolution of protests are available from the Purchasing Office upon request.

**SPECIAL CONDITIONS**

**1. GENERAL**

When the City's Purchasing Officer issues a purchase order document in response to the vendor's bid, a binding contract is created.

**2. ASSIGNMENT**

Neither the order, nor any interest therein, nor claim under, shall be assigned or transferred by the vendor, except as expressly authorized in writing by the City Purchasing Officer's Office. No such consent shall relieve the vendor from its obligations and liabilities under this order.

**3. VARIATION IN SCOPE OF WORK**

No increase in the scope of work of services or equipment after award will be accepted, unless means were provided for within the contract documents. Decreases in the scope of work of services or equipment can be made upon request by the city or if such variation has been caused by documented conditions beyond the vendor's control, and then only to the extent, as specified elsewhere in the contract documents.

**4. DISCOUNTS**

Any applicable discounts should be included in computing the bid submitted. Every effort will be made to process payments within 21 days of satisfactory receipt of goods or services. The City Purchasing Officer shall be the final determination of satisfactory receipt of goods or services.

**5. TAXES**

The price shall include all taxes applicable. The city is exempt from gross receipts tax on tangible personal property. A tax exempt certificate will be issued upon written request.

**6. INVOICING**

(A) The vendor's invoice shall be submitted in duplicate and shall contain the following information: invoice number and date, the purchase order number, description of the supplies or services, quantities, unit prices and extended totals. Separate invoices shall be submitted for each and every complete order.

(B) Invoices must be submitted to Facilities Division and NOT THE CITY PURCHASING AGENT or Accounts Payable.

**7. METHOD OF PAYMENT**

Every effort will be made to process payments within 30 days of receipt of a detailed invoice and proof of delivery and acceptance of the products hereby contracted, or as otherwise specified in the compensation portion of the contract documents.

**8. DEFAULT**

The city reserves the right to cancel all or any part of this order without cost to the city if the vendor fails to meet the provisions for this order, and except as otherwise provided herein, to hold the vendor liable for any excess cost occasioned by the city due to the vendor's default. The vendor shall not be liable for any excess cost if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Vendor and these causes have been made known to the City of Santa Fe in written form within five working days of the vendor becoming aware of a cause which may create any delay; such causes include, but are not limited to, acts of God or the public enemy, acts of the State or of the Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-contractors due to any of the above, unless the city shall determine that the suppliers or services to be furnished by the sub-contractor are obtainable from other sources in sufficient time to permit the vendor to meet the required delivery schedule. The rights and remedies of the city are not limited to those provided for in this paragraph and are in addition to any other rights provided for by law.

**9. NON-DISCRIMINATION**

By signing this City of Santa Fe bid or proposal, the vendor agrees to comply with the Presidents Executive Order No. 11246 as amended. <http://www.dol.gov/ofccp/regs/statutes/eo11246.htm>

**10. NON-COLLUSION**

In signing this bid or proposal, the vendor certifies they have not, either directly or indirectly, entered into action in restraint of full competition in connection with this bid or proposal submittal to the City of Santa Fe.

## **SCOPE OF SERVICES '14/39/P**

### **Introduction**

1. The City of Santa Fe's Facilities Division of the Public Works Department, is seeking the services of a qualified engineering firm to provide the construction drawings, specifications and contract documents for Downtown Transit Center – including improvements to Sheridan Street. Qualified engineering firms will propose a design team experienced in reconstructing streets, and in the other improvements planned for Sheridan Street. These improvements are: access for the City's largest buses, City para-transit vehicles and regional commuter buses, transit passenger shelters, widening of sidewalks, landscaping, subsurface utility engineering and street lighting, drainage analysis and improvements, relocation of a private parking lot entry and booth, new lighting, and public art. The design team should include an Architect with experience in municipal transit system passenger shelters and streetscapes. The design team will assist the City with obtaining design approvals of the affected adjacent property owners, particularly on the east side of Sheridan. The engineering firm should have experience with Federally funded construction projects.

2. This design work is funded by a Federal Transit Administration grant; all of the contract clauses in Exhibit 3 will be included in the Agreement with the Engineer. Exhibit 1, the City boilerplate Agreement, does not yet include those clauses.

### **Location and Background:**

1. Sheridan Street is one block long, located between Marcy St. and Palace, in downtown Santa Fe, New Mexico. Currently, it is serving as the Santa Fe Trails (the City's transit system) transfer station for the north area of Santa Fe. It should accommodate at least four buses simultaneously, including at least one forty foot long commuter bus. The conceptual design and preliminary schematic design for the improvements were completed in 2008 after a thorough public review process and was approved by the City's Historic Design Review Board (HDRB) and the City Council that same year. Refer to Exhibits 4 through 7 for those designs and the survey completed at that time. The designs are based on the requirements and preferences of the City's Transit Division, the property owners and property managers/lease holders on Sheridan in 2008, the Transit Advisory Committee and the Historic Design Review Committee. Therefore, the City is not looking for a redesign; the only major changes to the conceptual and schematic designs should be based on practical requirements.

2. In the winter of 2009/2010, new ADA ramps were constructed at the intersection of Sheridan and Marcy Streets; refer to Exhibit 8. This installation was designed to complement the layout of the schematic design for this project.

3. The Downtown Transit Center – Sheridan Improvements are primarily intended to provide comfortable, accessible, attractive and safe bus shelters for transit

system passengers and to create an attractive, inviting, well lit, pedestrian-friendly street for people walking between the convention center and the Plaza. To serve these two goals, the design includes:

- (a) A single traffic lane, one way street (traffic moving north to south) with wider sidewalks on both sides
- (b) The single traffic lane must be a minimum 20' wide to accommodate emergency vehicle access
- (b) Eliminating existing parallel parking
- (c) Relocating the existing private parking lot entrance and booth and reconfiguring the parking lot to suit
- (c) Landscaping throughout the project area
- (d) Improved, lower level lighting
- (e) Relocation of the transit information kiosk(s) with electronic information capability
- (f) Street configuration to accommodate largest buses (Northern N.M. Park & Ride's)
- (g) Street reconstruction, replacement of sidewalks and replacement of underground and above-ground utilities as needed for long-term reliability, for a street that will not need to be excavated for 20 years.
- (h) Incorporating public art in the streetscape design

**Scope of Services:**

The Scope of Work for the Sheridan Transit Improvements will include but are not limited to:

A. Program Phase

1. The Engineer will develop a comprehensive program which establishes goals, collects facts, identifies concepts and establishes design criteria to meet the needs of the project. The program should be based on the information and requirements of this request for proposals and determine the current project requirements, based on:

- a) the conceptual design
- b) storm drainage analysis
- c) above ground and below ground utilities requiring replacement, and new or extensions of utilities to support the essential and desirable design elements
- d) existing street condition analysis
- e) initial meetings with current property owners

The deliverable will be the program report. The program report should cover all of the elements described in this Section A. This extensive program phase work is required because (1) the archaeology process must commence as soon as possible, and the level of archaeology field work will be based on the location and estimated

depths of planned construction excavation and (2) it will result in a more accurate first opinion of probable construction cost.

2. The Engineer's key design team members will initially meet with City staff to review the development of the previous conceptual and schematic designs and changes to the bus system and changes on Sheridan St. since those plans were developed. It is critical that the design team have a thorough understanding of the criteria for the existing designs, as the final construction plans must retain the elements important to review boards and committees.

3. The design team, with the City Project Manager, will meet individually with the property owners or managers of all properties adjacent to Sheridan, to ascertain if any of their current and future plans for their properties will affect the existing conceptual plan, which had been approved by the property owners in 2008. The engineer will identify the current property owners and contact information, then the meetings will be arranged by the City Project Manager.

3. It is important for the design team to research and analyze changes to the current and future schedules and vehicles of Santa Fe Trails (City bus system), the commuter bus systems and the City's paratransit system since 2008, in regards to their access to and use of Sheridan St.

4. The Engineer will analyze drainage requirements and describe the drainage design needed, considering the scope of the project work. This work may include, but is not limited to evaluation of flows and recommendations for the replacement of existing affected drainage structures or addition of new structures in the immediate area.

5. The Engineer shall obtain street core samples, have them tested, and analyze the test results. The Engineer will coordinate with City Traffic Engineering to obtain current traffic data and future road plans. The Engineer shall recommend street rehabilitation or replacement, based on the core sample analysis, including the soil analysis, and current and future traffic flows and loads.

6. Analyze and recommend replacement of existing above ground and underground utility lines, based on information obtained by the Engineer from the utility owners, including the City utilities. The Engineer shall arrange for nondestructive pot-holing, if necessary, to identify the exact location of existing utilities that could conflict with construction design. Pot-holing (locating) is only anticipated for locations where substructure construction/excavation is required.

7. Meet with the Arts Commission director for the initial coordination, to discuss the potential locations and types of public art to be incorporated in the streetscape. Throughout all design phases, work with the Arts Commission and project public artist as a member of the design team to identify methods for incorporating public art into the streetscape and project.

8. The Engineer shall include a first opinion of probable construction cost in the program report.

9. Quality Control: In the Program Phase and all other phases, the City expects an excellent quality assurance effort. The City expects the Engineer to thoroughly review all sub-consultant's reports, plans and specifications, prior to submittal to the City. The City reserves the right to reject submittals that show a lack of quality control. Should the City reject submittals for this reason, the City will not be charged for reproduction costs of the follow up submittal. The City will not provide an extensive review of plans, however, if the City must do so, it will back charge consultants its actual costs. Errors and omissions will be the responsibility of the consultant. Consultants will not be liable for errors or omissions in owner furnished data.

10. The Engineer shall receive written approval of the program report from the City prior to proceeding with the Design Development services.

#### B. Design Development Phase

1. From the approved Program Phase documents, the Engineer shall prepare the design development documents consisting of drawings, outline specifications, and other documents to fix and describe the size and character of the entire project as to all structural, mechanical and electrical systems, materials, and such other design essentials as may be appropriate. Additionally, these documents shall identify design features, including locations for public art pieces and public art elements, the probable project schedule and a detailed estimate of cost, equipment to be installed in the project, and a statement which identifies the need for any additional data, surveys, or tests required to support construction documents. The Consultant shall map utility locations onto plans and profile sheets

2. The Engineer shall create and incorporate all design plans in AutoCAD. The AutoCAD software shall be at least AutoCAD 2013.

3. 50% plans should show lighting and intersection design details, geometrics, plan and profile sheets showing recommended horizontal and vertical alignment, the depths of excavations, including the depths and alignments of all of the existing utilities identified in the programming phase, typical sections, intersection layouts, drainage requirements including major drainage structures, utility relocation/adjustment requirements, utility replacements, preliminary electrical plan, and a preliminary construction cost estimate by construction type. Include details as to the type and height of street lighting, elevation and section views of all above ground structures, and show landscaping. Provide information about the colors and materials of all street surfaces and above ground structures and objects.

4. After incorporation of City staff review comments of the 50% submittal plans, the Engineer, with assistance from key sub-consultants and City staff, will present the plans to the Transit Advisory Board, Historic Design Review Board, Business and Quality of Life Committee, and the City governing body.

5. The Engineer shall receive written approval of the revised, 100% submittal plans from the City of Santa Fe prior to proceeding with the Construction Documents Phase services.

#### C. Construction Documents Phase

1. From the approved design development phase plans and documents, the Engineer shall prepare bidding plans and documents setting forth in detail the requirements for the construction of the project, which shall at a minimum include bid forms, the conditions of the contract for construction (general, and other conditions of the contract). The bidding documents shall be based on information contained in the design development drawings and other documents previously approved by the Owner. The bidding documents shall be in the form of a lump sum bid. Upon completion of the bidding documents, the Engineer shall brief the Owner on the bidding documents, specifically addressing previously approved requirements contained in the design development drawings and other documents. The Engineer shall, at this briefing, furnish to the Owner a detailed cost estimate. The Engineer shall be responsible for preparing a complete furnishings, fixtures, and equipment bid package. A copy of the approved construction plans, the approved project manual/request for bid, including the complete specifications, and the approved final cost estimate shall be provided to the Owner on a CD or CDs.

2. The Engineer will assist the Owner by preparing and submitting applications for any permits required for construction.

**Upon City acceptance of the Construction Documents phase submittals described above, the following described design services may be added as an amendment to the Agreement Between Owner and Engineer, if it is in the best interest of the City to do so.**

#### D. Bidding Phase

The Engineer, following the Owner's written approval of the bidding documents, shall assist the Owner in obtaining bids, issuing addendums, answering questions from vendors and contractors, in distributing the bid documents, and in awarding and preparing contracts for construction. The Engineer and a design team representative from each discipline shall attend the pre-bid meeting. The finalized invitation to bid shall be forwarded to the Owner by the Engineer.

#### E. Construction Administration and 11 Month Warranty Phase

1. The construction phase will commence with the award of the contract for construction and continues until the one year warranty inspection and report is submitted by the Engineer and approved by the Owner.

2. The Engineer shall be the representative of the Owner during the construction phase and shall advise and consult the Owner.

3. The Engineer shall submit to the Owner, for approval, a list of critical inspection points based upon the construction schedule furnished by the contractor. The Engineer shall make periodic visits to the site, a minimum of three per week during construction, and once a week schedule project status meetings with City staff and contractor. The Engineer, as appropriate during the progress of the work, notify the Owner in writing about the progress and condition of the work, and to adequately represent the Owner. Additionally, the Engineer shall guard the Owner against defects and deficiencies in the construction. During construction, the contractor's general foreman will maintain a set of construction plans, marked up with all as-built changes. If requested by the Owner, the Engineer shall provide a full time construction monitor at the site to coordinate project construction, minimize project time and cost, and maintain project quality. This would be considered as an additional service. After substantial completion, the Engineer will obtain the contractor's marked-up plans and produce and submit as-built plans in both pdf and AutoCAD, to the City Project Manager.

4. Upon prior notice to the Owner, the Engineer shall conduct inspections to determine the dates of substantial completion and final completion; additionally, an eleven-month warranty inspection report shall be prepared and submitted to the Owner.

## **SUBMITTAL REQUIREMENTS**

### **'14/39/P**

#### **A. SUBMITTAL PACKET**

1. Seven copies of the proposal packet shall be submitted. The packet should be as concise as possible.

#### **2. PROPOSAL FORMAT**

For uniformity of review and evaluation of proposals, use the following format in preparing your proposal:

- A. Table of Contents
- B. General Work Plan Based on Scope of Work
- C. Project Schedule
- D. Project Team Description and Qualifications
- E. Knowledge of Local Conditions
- F. Experience / Past Performance
- G. Quality Assurance
- H. Resource Availability
- I. Additional Pertinent Information
- J. Resumes
- K. Certificate of Liability Insurance
- L. Signed and dated (in dark blue ink) FTA contract clauses

Proposals must address all items listed in Sections A through H and J through L, above. Proposals that do not address these items will be considered non-responsive.

Proposal packets must be 8 ½" x 11" landscape or portrait format, limited to 30 pages for items A through J, excluding the covers, table of contents and separator sheets. The smallest acceptable pitch is 11 point with nominal 1" margins and normal line spacing.

Include in a separate, labeled, sealed envelope an estimate of man-hours/fee estimate, using the form included in this RFP on pg. 21. This estimate should detail the hours to be dedicated for each category. The separate envelope should be labeled on the outside with the firm name, the RFP number and "Man-Hours/Fee Estimate". This envelope will not be opened until after the proposals have been evaluated and scored. This submittal will be used as a basis for negotiation with the consultant who receives the highest score.

#### **B. GENERAL WORK PLAN BASED ON SCOPE OF WORK**

Include a general work plan outlining the firm's approach to the scope of services. This plan should show a familiarity with the project site and a thorough understanding of the project scope. Demonstrate an understanding of the complexities and interrelationships among the different parts of the project. The description of the Engineer's general work plan will be used to evaluate the proponents' level of understanding of the project scope and the amount of work to be performed by the

prime consultant versus sub-consultants. The general work plan should clearly show that the proposing prime consultant will be doing the majority of the design work.

### C. PROJECT SCHEDULE

Include a bar graph project schedule for all phases of work through City acceptance of construction documents and final plans. The schedule shall include the time necessary for the City review of work products. Assume the Notice To Proceed will be issued eight weeks after the proposals due date. The schedule, as finally negotiated, will be incorporated in the Agreement between Owner and Engineer.

### D. PROJECT TEAM DESCRIPTION AND QUALIFICATIONS

1. The qualifications of the firm for the type of work required. The ability and expertise of the proposing firm and sub-consultant firms necessary to work on this type of project should be clearly presented. Proposals shall provide responses to the following items to describe the proposing firm's organization, capabilities and specialties:

- a. Official Name of Business
- b. Types of services provided
- c. Legal information: Individual, partnership, corporation joint venture, or other  
Names, titles, professional registration, addresses of firm owner, partners or officers.  
Categories in which firm is legally qualified to do business in New Mexico
- d. Firm Size – Describe the overall firm size and state the current number and type of regular full time employees in the office or facility that would be performing the work for this project, assisting the project team members. How long have these employees been with the firm?

2. Include the organizational chart for the project team, including sub-consultant members: provide the name of each key team member, their position title, assigned tasks for this project, and percent of time they will be assigned to the project.

3. For each prime and sub-consultant key member of the project team and other key personnel who will be assigned to the project, provide their type of license, certifications, their assigned tasks and the approximate percentage of project work that will be performed by each of these staff members.

4. The name and address of any proposed sub-consulting firms, and the identification of the tasks to be performed by them, and the names, type of license or certifications, and position title of the key personnel from each firm who will be assigned to this project.

5. More expanded information about the project team individuals, prime consultant and sub-consultant, can be included in the resumes section of the proposal.

6. The address, telephone and fax numbers of the office in which the majority of the work will be performed.

7. If proposing sub-consulting firms, briefly describe previous associations and experience in effectively working with and managing a combination of firms. Identify whether firms proposed for this project represent new joint venture associations.

8. Should the firm be invited for personal interview, the city requires the principal and key project personnel who will be assigned to the project be present and introduced to the selection committee.

E. Knowledge of Local Conditions

Describe knowledge and recent experience with City of Santa Fe projects, local boards, committees and commissions, historic sensitivity, local design practices, archaeological requirements in downtown Santa Fe, local construction methods, conditions & seasonal requirements, and cost estimating in the general project area, i.e., Santa Fe Regional Area.

F. Experience / Past Performance

Discuss recent (within the past six years) experience of the proposing firm and project team on projects similar in size and complexity to this project. List project name, project budget, consulting firms involved, prime consultant, the design and construction completion dates in comparison to original schedule, original design cost and final design cost, # of amendments to the design contract prior to bidding phase, construction estimate, construction cost, amount of change orders due to design error or omission as a percentage of construction cost, owner/client, and references (including contacts and telephone numbers). Include photographs of completed projects. Describe your firm's expertise and familiarity with procedural, regulatory and contract document requirements on projects of this scale, with and without Federal funding. If the proposing Consultant is going to use other consulting firms to accomplish parts of the work, list the firm, the firm's location, the licensed professional at each firm who would be responsible for the work and which portion of the work they would be performing. If the proposed Architect is not in the Engineer's firm, list the proposed Architect's experience with projects of this type in the past six years.

With respect to subcontracts with other firms, describe recent associations on completing projects and your ability to effectively coordinate and manage a combination of firms. Indicate who the firms were.

G. Quality Assurance

Provide detailed internal quality control procedures for verification of all plans, specifications, and cost estimates, including checking sub-consultant's plan sheets and specifications for completeness, and accuracy.

#### H. Resource Availability - Workload

Describe the proposing firm's current workload (particularly in the office that will be doing the design work on this project). Provide project names, locations, clients, current phase of work for each project, and schedule for each project. List those in your firm who are assigned to these projects that will also be assigned to the proposed project, what percentage of their time will be made available to this project, and the firm's capacity in these projects (i.e. subcontractor for structural design, landscape design, etc.).

Describe the sub-consultant project team members' current workload at their firm, with the same details as listed in the previous paragraph.

#### I. Additional Pertinent Information (if needed)

#### J. Resumes

For the sake of uniformity, submit the resumes of key members of the project team, including sub-consultant members, using the following format:

- Name and Title
- Specialized Professional Competence
- Education and Licenses
- Years with Firm
- Current Responsibilities
- Representative Project Assignments with Firm
- Representative Project Assignments for Other Identified Employers
- Professional Background

#### K. ERRORS AND OMISSIONS INSURANCE

All firms wishing to provide professional engineering design services on City projects must carry standard Errors and Omissions Insurance in the minimum amount of \$1,000,000.00. No additional direct or reimbursable expense is allowed under the Agreement for this standard coverage. Insurance certificates shall apply to prime consultants only and must be included with the proposal.

## EVALUATION CRITERIA AND WEIGHTED VALUES

**PROJECT:** Downtown Transit Center – Sheridan Improvements **RFP#** '14/39/ P

**NAME OF CONSULTANT FIRM:** \_\_\_\_\_

**EVALUATION CRITERIA:**

The consultant selection will be based upon evaluation of the proposal and the consultant firm relative to the evaluation criteria.

<b>Proposal Component</b>	<b>Weighted Value</b>	<b>Evaluation Points (1 = low, 10 = High)</b>	<b>Total Score</b>	<b>Max Score</b>
<b>Project Approach/ Schedule</b>	20			200
<b>Qualifications</b>	20			200
<b>Experience / Past Performance</b>	25			250
<b>Knowledge of Local Conditions:</b>	10			100
<b>Quality Assurance:</b>	5			50
<b>Resource Availability:</b>	10			100
<b>Quality of Proposal:</b> Is the proponent's knowledge and ability for this project clearly and concisely conveyed? Is all the information readily available and present? Did the proponent follow the format prescribed in the RFP?	10			100
<b>Total Score</b>	100			1000

Please do not minimize the importance of an adequate response in any area.

**SELECTION COMMITTEE EVALUATOR**

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

*PRINTED NAME:* \_\_\_\_\_

*DEPARTMENT & DIVISION:* \_\_\_\_\_

## **EVALUATION COMMITTEE MEMBERS**

The committee will consist of representatives from the following departments:

1. Finance Department
  - Purchasing Division
2. Public Works Department
  - Facilities Division
  - Traffic Engineering
  - Roadways & Trails Division
3. Transportation Department
  - Transit Division

At its discretion, the City reserves the right to alter the membership and size of the committee.

Scores of the evaluation committee members will be totaled to determine the top rated firms.

Interviews, at the option of the City, will be scheduled for the top three rated firms, if deemed necessary. They will consist of a 20-minute presentation by the Proponent, and a 30-minute question and answer period. If interviews are conducted for the top three rated firms, those scores totaled from the evaluation committee members from the interview evaluations will determine the final top rated firm, unless other tangible extenuating circumstances are documented.

Unless noted elsewhere in this RFP, the same evaluation form will be used to separate the interview scores.

CITY OF SANTA FE, NEW MEXICO PUBLIC WORKS DEPARTMENT

FEE ESTIMATE PROFESSIONAL SERVICES				
1. NAME OF PROJECT: DOWNTOWN TRANSIT CENTER - SHERIDAN IMPROVEMENTS / ENGINEERING DESIGN SERVICES RFP # '14/39/P			2. CIP #: 669	
3. NAME OF APPLICANT:			4. DATE OF PROPOSAL:	
5. ADDRESS OF APPLICANT		6. TYPE OF SERVICE TO BE FURNISHED:		
PART 2 – COST SUMMARY BASIC SERVICES				
7. DIRECT LABOR (specify categories)	ESTIMATED HOURS	HOURLY RATE	ESTIMATED COST	TOTALS
DIRECT LABOR TOTAL:				
8. OVERHEAD (specify cost pool)	RATE	X BASE	ESTIMATED COST	
OVERHEAD TOTAL:				
9. FEE OR PROFIT (show rate and base)				
SUPPLEMENTAL SERVICES				
10. SUBCONTRACTS (Identify & purpose)			ESTIMATED COST	
SUBCONTRACTOR TOTAL:				
11. SPECIAL EQUIPMENT	RATE	ESTIMATED HOURS	ESTIMATED COST	
EQUIPMENT TOTAL:				
N/A			ESTIMATED COST	
N/A				ESTIMATED COST
SUBTOTAL ITEMS 7-11:				
14. GROSS RECEIPTS				
15. TOTAL PRICE				
16. SIGNATURE OF PREPARER	OWNER'S REVIEW BY		FACILITIES DIVISION	

 **AIA**® Document B101™ – 2007

**Standard Form of Agreement Between Owner and Architect**

**FOR RFP PURPOSES ONLY**

AGREEMENT made as of the    day of    in the year 2014

BETWEEN the Engineer's client identified as the Owner:

City of Santa Fe  
200 Lincoln Ave.  
Santa Fe, New Mexico 87501

and the Engineer:

yet to be determined

for the following Project:

Downtown Transit Center - Sheridan Improvements  
Sheridan Ave., Palace to Marcy St.  
New bus shelters with lighting, sidewalk widening, new street furnishings, irrigation and landscaping, street reconstruction, drainage improvements, ADA ramps, throughout the one block long street. The work also includes relocating an existing private parking lot kiosk and reconfiguring the parking lot layout at the southeast corner of Sheridan Ave. and Marcy St.

The Owner and Engineer agree as follows.

**ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Exhibit 1

## TABLE OF ARTICLES

1	INITIAL INFORMATION
2	ENGINEER'S RESPONSIBILITIES
3	SCOPE OF ENGINEER'S BASIC SERVICES
4	ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

### EXHIBIT A INITIAL INFORMATION

#### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

*(Paragraph deleted)*

*(Engineer*

The project is the design of Downtown Transit Center – Sheridan Improvements, detailed construction designs based on the provided conceptual design. This conceptual design was based on extensive review by City staff, the Transit Advisory Board and the Historic Design Review Committee; the Engineer is expected to adhere to the architectural style, material and colors for the transit stop and the entire street. The accessible ramps installed at the intersection of Sheridan and Marcy St. after the conceptual design was approved were designed to compliment the greater width of the sidewalks that will be fully designed in this project.

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

.1 Commencement of construction date:

yet to be determined (no construction funding available at this time)

.2 Substantial Completion date:

yet to be determined

§ 1.3 The Owner and Engineer may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Engineer shall appropriately adjust the schedule, the Engineer's services and the Engineer's compensation.

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## ARTICLE 2 ENGINEER'S RESPONSIBILITIES

§ 2.1 The Engineer shall provide the professional services as set forth in this Agreement.

§ 2.2 The Engineer shall perform its services consistent with the professional skill and care ordinarily provided by Engineers practicing in the same or similar locality under the same or similar circumstances. The Engineer shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Engineer shall identify a representative authorized to act on behalf of the Engineer with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Engineer shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Engineer's professional judgment with respect to this Project.

§ 2.5 The Engineer shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Engineer normally maintains, the Owner shall reimburse the Engineer for any additional cost:

.1 General Liability

Each Occurrence \$1,000,000, damage to Rented Premises (Ea. Occurrence) \$1,000,000, Med Exp (Any one person) \$10,000, Personal & Adv Injury \$1,000,000, General Aggregate \$2,000,000, Products – Comp/Op Agg \$2,000,000, Emp Ben. \$1,000,000

.2 Automobile Liability

Combined single Limit (Ea accident) \$1,000,000

.3 Workers' Compensation

E.L. Each Accident \$1,000,000, E.L. disease – Ea. Employee \$1,000,000, E.L. Disease – Policy Limit \$1,000,000

.4 Professional Liability

Ea. Claim \$1,000,000, Aggregate \$2,000,000

## ARTICLE 3 SCOPE OF ENGINEER'S BASIC SERVICES

§ 3.1 The Engineer's Basic Services consist of those described in Article 3 and include usual and customary architectural, and civil, structural, mechanical/plumbing, traffic and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Engineer shall manage the Engineer's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Engineer shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Engineer shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Engineer shall provide prompt written notice to the Owner if the Engineer becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Engineer shall submit for the Owner's approval a schedule for the performance of the Engineer's services.. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Engineer or Owner. With the Owner's approval, the Engineer shall adjust the schedule, if necessary, as the Project proceeds until the completion of the bid documents.

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User Notes:

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§ 3.1.4 The Engineer shall not be responsible for an Owner's directive or substitution made without the Engineer's approval.

§ 3.1.5 The Engineer shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Engineer shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Engineer shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

### § 3.2 PROGRAMMING PHASE SERVICES

§ 3.2.1 The Engineer shall review the conceptual and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Engineer's services.

§ 3.2.2 The Engineer shall prepare a preliminary evaluation of the Owner's conceptual design, Project site, and the other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Engineer shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Engineer shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Engineer shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Engineer shall prepare and present for the Owner's approval a program illustrating the scale and relationship of the Project components.

§ 3.2.5 The Engineer shall submit to the Owner an opinion of the Cost of the Work prepared in accordance with Section 6.3.

*(Paragraphs deleted)*

§ 3.2.6 The Engineer shall submit the final Program to the Owner, and request the Owner's approval.

*(Paragraph deleted)*

### § 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Program, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Engineer shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, civil, structural, mechanical, plumbing and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Engineer shall update the estimate of the Cost of the Work.

§ 3.3.3 The Engineer shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

### § 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Engineer shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and

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Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Engineer acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Engineer shall review in accordance with Section 3.6.4.

§ 3.4.2 The Engineer shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 The Engineer shall update the estimate for the Cost of the Work.

§ 3.4.4 The Engineer shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

If it is in the best interest of the Owner, when construction funding becomes available, the following additional phases of work may be added to this agreement by amendment:

*(Paragraph deleted)*

## § 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

### § 3.5.1 GENERAL

The Engineer shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Engineer shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

### § 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Engineer shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Engineer shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

### § 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Engineer shall assist the Owner in obtaining proposals by

- .1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors; and
- .3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Engineer shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

## § 3.6 CONSTRUCTION PHASE SERVICES

### § 3.6.1 GENERAL

§ 3.6.1.1 The Engineer shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Engineer's services under this Agreement unless the Owner and the Engineer amend this Agreement.

§ 3.6.1.2 The Engineer shall advise and consult with the Owner during the Construction Phase Services. The Engineer shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Engineer shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Engineer be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Engineer shall be responsible for the Engineer's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Engineer's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Engineer issues the final Certificate for Payment.

### § 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Engineer shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Engineer shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Engineer shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Engineer has the authority to reject Work that does not conform to the Contract Documents. Whenever the Engineer considers it necessary or advisable, the Engineer shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Engineer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Engineer to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Engineer shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Engineer's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Engineer shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Engineer shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Engineer's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2007, the Engineer shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

### § 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Engineer shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Engineer's certification for payment shall constitute a representation to the Owner, based on the Engineer's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's

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Application for Payment, that, to the best of the Engineer's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Engineer.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Engineer has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Engineer shall maintain a record of the Applications and Certificates for Payment.

#### § 3.6.4 SUBMITTALS

§ 3.6.4.1 The Engineer shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Engineer's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Engineer's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Engineer-approved submittal schedule, the Engineer shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Engineer, of any construction means, methods, techniques, sequences or procedures. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Engineer shall specify the appropriate performance and design criteria that such services must satisfy. The Engineer shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Engineer. The Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Engineer shall review and respond to requests for information about the Contract Documents. The Engineer shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Engineer's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Engineer shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Engineer shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

#### § 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Engineer may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Engineer shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Engineer shall maintain records relative to changes in the Work.

**§ 3.6.6 PROJECT COMPLETION**

§ 3.6.6.1 The Engineer shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Engineer's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Engineer shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Engineer shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Engineer shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

**ARTICLE 4 ADDITIONAL SERVICES**

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Engineer shall provide the listed Additional Services only if specifically designated in the table below as the Engineer's responsibility, and the Owner shall compensate the Engineer as provided in Section 11.2.

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1		
§ 4.1.2 Multiple preliminary designs		
§ 4.1.3 Measured drawings		
§ 4.1.4 Existing facilities surveys		
§ 4.1.5 Site Evaluation and Planning (B203™-2007)		
§ 4.1.6		
§ 4.1.7		
§ 4.1.8		
§ 4.1.9 Engineerural Interior Design (B252™-2007)		
§ 4.1.10 Value Analysis (B204™-2007)		
§ 4.1.11		
§ 4.1.12 On-site Project Representation (B207™-2008)		
§ 4.1.13 Conformed construction documents		
§ 4.1.14 As-Designed Record drawings		
§ 4.1.15 As-Constructed Record drawings		
§ 4.1.16		
§ 4.1.17		
§ 4.1.18 Tenant-related services		
§ 4.1.19 Coordination of Owner's consultants		
§ 4.1.20 Telecommunications/data design		
§ 4.1.21 Security Evaluation and Planning		

	(B206™-2007)		
§ 4.1.22	Commissioning (B211™-2007)		
§ 4.1.23	Extensive environmentally responsible design		
§ 4.1.24	LEED® Certification (B214™-2012)		
§ 4.1.25	Fast-track design services		
§ 4.1.26			
§ 4.1.27	Furniture, Furnishings, and Equipment Design (B253™-2007)		

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Engineer's responsibility, if not further described in an exhibit attached to this document.

none

§ 4.3 Additional Services may only be provided after execution of this Agreement, without invalidating the Agreement, by written amendment signed by the City and the Engineer. Except for services required due to the fault of the Engineer, any Additional Services provided in accordance with this Section 4 shall entitle the Engineer to compensation pursuant to Section 11.3 and an appropriate adjustment in the Engineer's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Engineer shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Engineer shall not proceed to provide the following services until the Engineer receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Engineer is party thereto;
- .9 Evaluation of the qualifications of bidders or persons providing proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Engineer.

*(Paragraphs deleted)*

§ 4.3.4 If the services covered by this Agreement have not been completed within eighteen ( 18 ) months of the date of this Agreement, through no fault of the Engineer, extension of the Engineer's services beyond that time shall be compensated as Additional Services.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Engineer, the Owner shall furnish the requested information as necessary and relevant for the Engineer to evaluate, give notice of or enforce lien rights.

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§ 5.2 The Engineer shall initially establish and periodically update the estimated construction cost, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the maximum allowable construction cost at anytime after the programming phase is complete, the Owner shall notify the Engineer. The Owner and the Engineer shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Engineer's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Engineer's services.

§ 5.4 Unless otherwise provided for under this Agreement, the Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 Unless otherwise provided for under this Agreement, the Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Engineer. Upon the Engineer's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Engineer to furnish them as an Additional Service, when the Engineer requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

*(Paragraph deleted)*

§ 5.9 The Owner shall provide prompt written notice to the Engineer if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Engineer's Instruments of Service.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Engineer's consultants through the Engineer about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Engineer of any direct communications that may affect the Engineer's services.

*(Paragraphs deleted)*

## ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Engineer and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Engineer, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Engineer, represent the Engineer's judgment as a design professional. It is recognized, however, that neither the Engineer nor the

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Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Engineer cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Engineer.

§ 6.3 In preparing estimates of the Cost of Work, the Engineer shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Engineer's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Engineer shall provide such services as an Additional Service under Article 4.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Engineer submits the Construction Documents to the Owner, through no fault of the Engineer, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Engineer's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Engineer shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Engineer in making such adjustments.

*(Paragraphs deleted)*

#### **ARTICLE 7 COPYRIGHTS AND LICENSES**

§ 7.1 The Engineer and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Engineer intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Engineer and the Engineer's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Engineer and the Engineer's consultants.

§ 7.3 Upon execution of this Agreement, the Engineer grants to the Owner a nonexclusive license to use the Engineer's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to this Project or any other City of Santa Fe project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Engineer shall obtain similar nonexclusive licenses from the Engineer's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for this Project or any other City of Santa Fe project. If the Engineer rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Engineer and Engineer's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Engineer and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Engineer. Any unauthorized use of the

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Instruments of Service shall be at the Owner's sole risk and without liability to the Engineer and the Engineer's consultants.

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 GENERAL

§ 8.1.1 The Owner and Engineer shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Engineer waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Engineer, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Engineer and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

### § 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation in accordance with the New Mexico Public Works Mediation Act. If such matter relates to or is the subject of a lien arising out of the Engineer's services, the Engineer may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 If the parties agree to mediate a dispute, the parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.3 **The method of dispute resolution shall be in accordance with New Mexico Public Works Mediation Act 13-4C-1 through 13-4C-11, NMSA 1978.**

*(Paragraphs deleted)*

## ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Engineer in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Engineer's option, cause for suspension of performance of services under this Agreement. If the Engineer elects to suspend services, the Engineer shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Engineer shall have no liability to the Owner for delay or damage caused by the Owner because of such suspension of services. Before resuming services, the Engineer shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Engineer's services. The Engineer's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Engineer shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Engineer shall be compensated for expenses incurred in the interruption and resumption of the Engineer's services. The Engineer's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Engineer, the Engineer may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

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§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Engineer for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Engineer, the Engineer shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Engineer's services and include expenses directly attributable to termination for which the Engineer is not otherwise compensated, plus an amount for the Engineer's anticipated profit on the value of the services not performed by the Engineer.

§ 9.8 The Owner's rights to use the Engineer's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

#### ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Engineer, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Engineer shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Engineer to execute certificates, the proposed language of such certificates shall be submitted to the Engineer for review at least 14 days prior to the requested dates of execution. If the Owner requests the Engineer to execute consents reasonably required to facilitate assignment to a lender, the Engineer shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Engineer for review at least 14 days prior to execution. The Engineer shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Engineer.

§ 10.6 Unless otherwise required in this Agreement, the Engineer shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Engineer shall have the right to include photographic or artistic representations of the design of the Project among the Engineer's promotional and professional materials. The Engineer shall be given reasonable access to the completed Project to make such representations. However, the Engineer's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Engineer in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Engineer in the Owner's promotional materials for the Project.

§ 10.8 If the Engineer or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information, all subject to the requirements set forth in the New Mexico Inspection of Public Records Act, and City ordinances.

#### §10.9 INDEMNIFICATION

The Engineer shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgements, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Engineer's performance under this Agreement as well as the performance

of Engineer's employees, agents, representatives and sub-consultants.

#### § 10.10 APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City, this Agreement shall terminate upon written notice being given by the City to the Engineer. The City's decision as to whether sufficient appropriations are available shall be accepted by the Engineer and shall be final.

#### § 10.11 THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the City and the Engineer. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

#### § 10.12 STATUS OF ENGINEER; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUB-CONSULTANTS

A. The Engineer and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Engineer, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement.

B. Engineer shall be solely responsible for payment of wages, salaries and benefits to any and all employees or sub-consultants retained by Engineer in the performance of the services under this Agreement.

C. The Engineer shall comply with City of Santa Fe Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this Agreement.

#### § 10.13 CONFLICT OF INTEREST

The Engineer warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Engineer further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

#### § 10.14 ASSIGNMENT: SUBCONTRACTING

The Engineer shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the City. The Engineer shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City.

#### § 10.15 RELEASE

The Engineer, upon acceptance of final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Engineer agrees not to purport to bind the City to any obligation not assumed herein by the City unless the Engineer has express written authority to do so, and then only within the strict limits of that authority.

#### § 10.16 INSURANCE

A. Engineer shall also obtain and maintain Workers' compensation insurance, required by law, to provide coverage for Engineer's employees throughout the term of this Agreement. Engineer shall provide the City with evidence of its compliance with such requirement.

B. Engineer shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. The Engineer shall

furnish the City with proof of insurance of Engineer's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

**§ 10.17 RECORDS AND AUDIT**

The Engineer shall maintain, throughout the term of this Agreement and for a period of three years thereafter, detailed records that indicate the date, time and nature of services rendered. These records shall be subject to inspection by the City, the Department of Finance and Administration, and the State Auditor. The City shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

**§ 10.18 APPLICABLE LAW: CHOICE OF LAW: VENUE**

Engineer shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Engineer agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

**§ 10.19 AMENDMENT**

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

**§ 10.20 NON-DISCRIMINATION**

During the term of this Agreement, Engineer shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Engineer hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

**§ 10.21 SEVERABILITY**

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

10.22 NOTICES: Any and all notices provided for hereunder shall be in writing and shall be deemed delivered, given and received when (i) personally delivered, or (ii) five days after the same are deposited in the United States Postal Service mail, postage prepaid, certified mail, return receipt requested, addressed to the applicable party at the address indicated below for each party, or at such other address as may be designated by either party in a written notice to the other party.

OWNER: Facilities Division, Public Works Department  
City of Santa Fe  
PO Box 909  
Santa Fe, New Mexico 87504-0909

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ENGINEER: yet to be determined

10.23 NEW MEXICO TORT CLAIMS ACT: Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

**ARTICLE 11 COMPENSATION**

§ 11.1 For the Engineer's Basic Services described under Article 3, the Owner shall compensate the Engineer as follows:

yet to be determined

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Engineer as follows:

none

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Engineer as follows:

none

§ 11.4 Compensation for Additional Services of the Engineer's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Engineer.

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Programming Phase	yet to be determined	percent (	)
Design Development Phase		percent (	)
Construction Documents Phase		percent (	)

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Total Basic Compensation	one hundred	percent (	100	)
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§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Engineer shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Engineer and the Engineer's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Engineer's and Engineer's consultants' normal review practices.

not applicable

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## § 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Engineer and the Engineer's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .3 Printing, reproductions, plots, standard form documents;
- .4 Postage, handling and delivery;

*(Paragraph deleted)*

- .5 .5 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .9 All taxes levied on reimbursable expenses;
- .10 GPS for field survey
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Engineer and the Engineer's consultants.

## § 11.9 COMPENSATION FOR USE OF ENGINEER'S INSTRUMENTS OF SERVICE

If the Owner terminates the Engineer for its convenience under Section 9.5, or the Engineer terminates this Agreement under Section 9.3, all finished or unfinished documents, data, sketches, calculations, estimates, records, schedules, studies, surveys, drawings, maps, models, photographs, reports, and such other information and data accumulated in the performance of services under this Agreement, whether complete or in progress, prepared by the Engineer under this Agreement shall become the Owner's property, and the Engineer shall be entitled to receive compensation for actual work satisfactorily completed hereunder, including Reimbursable Expenses authorized by Owner which are then due.

## § 11.10 PAYMENTS TO THE ENGINEER

§ 11.10.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable within twenty one (21) days of undisputed request for payment.

### § 11.10.2

*(Paragraphs deleted)*

The Owner shall not withhold amounts from the Engineer's compensation to impose a penalty or liquidated damages on the Engineer, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Engineer agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.3 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

*(Paragraph deleted)*

## ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

not applicable

## ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Engineer and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Engineer.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Engineer

.2

*(Paragraphs deleted)*

Other documents:

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*(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)*

Exhibit A: Design Schedule (yet to be received)

Exhibit B: Certificate of Liability Insurance (yet to be received)

Exhibit C: List of Sub – Consultants (yet to be received)

This Agreement entered into as of the day and year first written above.

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(1853254989)

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below:

CITY OF SANTA FE:

\_\_\_\_\_  
, MAYOR

DATE: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
YOLANDA Y. VIGIL, CITY CLERK

*(Table deleted)*

ENGINEER:

BY: \_\_\_\_\_

NAME, TITLE

NM LICENSE NO. \_\_\_\_\_

NM Taxation and Revenue CRS No.:

\_\_\_\_\_  
City of Santa Fe Business Registration No.:

APPROVED AS TO FORM:

*Judith Brenner For*  
\_\_\_\_\_  
KELLEY A. BRENNAN, 3/4/14  
INTERIM CITY ATTORNEY

APPROVED:

\_\_\_\_\_  
MARCOS A. TAPIA, FINANCE DIRECTOR

\_\_\_\_\_  
Business Unit / Line Item

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# Living Wage Ordinance

Ordinance Number §28-1-28-1.12DSFCC 1987

**Purpose:**

The City of Santa Fe Living Wage Ordinance was adopted to establish minimum hourly wages.

**Who it affects:**

- All profit and nonprofit businesses required to have a business license or business registration with the City of Santa Fe.

**Compliance:**

- Affected businesses are required to pay employees an hourly wage of \$10.66 effective March 1, 2014.
- Beginning January 1, 2009, and each year thereafter, the minimum wage shall be adjusted upward by an amount corresponding to the previous year's increase, if any, in the Consumer Price Index for the Western Region for Urban Wage Earners and Clerical Workers.
- For workers who customarily receive more than \$100 per month in tips or commissions, any tips or commissions received and retained by a worker shall be counted as wages and credited toward satisfaction of the minimum wage provided that, for tipped workers, all tips received by such workers are retained by the workers, except that the pooling of tips among workers shall be permitted.
- The value of health care benefits and child care shall be considered as an element of wages.
- Nonprofit organizations whose primary source of funds is from Medicaid waivers are *exempt*.

**Prohibitions against retaliation and circumvention:**

- It shall be unlawful for any business, employer or employer's agent or representative to take any action against an individual in retaliation for exercising or communicating rights under this ordinance. This includes retaliation against individuals who mistakenly but in good faith allege noncompliance with the ordinance.
- Taking adverse action against an individual within 60 days of the individual's assertion of or communication of information regarding rights raises a reputable presumption of retaliation for assertion of rights.
- It shall be unlawful for any business or employer to intentionally circumvent the requirements of this ordinance by contracting portions of its operations or leasing portions of its property.

**Enforcement and Remedies:**

- Administrative Enforcement—The city manager, or his/her designee, is authorized, as appropriate and as resources permit, to enforce this ordinance.
- Criminal Penalty—A person violating this ordinance shall be guilty of a misdemeanor and, upon conviction, for each offense may be subject to fines and imprisonment as set forth in Section 1-3 SFCC 1987. A person violating any of the requirements of this ordinance shall be guilty of a separate offense for each day or portion thereof and for each worker or person to whom any such violation occurred.
- Other Remedies—The city, any individual aggrieved by a violation of this ordinance, or any entity the members of which have been aggrieved by a violation of this ordinance, may bring a civil action in a court of competent jurisdiction to restrain, correct, abate or remedy any violation of this ordinance and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, reinstatement, the payment of any wages due and an additional amount as liquidated damages equal to twice the amount of any wages due, injunctive relief, and reasonable attorney's fees and costs.

**Nonexclusive Remedies and Penalties—The remedies provided in this section are not exclusive, and nothing in this ordinance shall preclude any person from seeking any other remedies, penalties, or relief provided by law.**

**Posting and Publication:**

- Any business subject to the provisions of this ordinance shall as a condition to obtaining and holding a City of Santa Fe business license or registration, post and display in a prominent location next to its business license or registration on the business premises a notice, in English and Spanish, that the business is in compliance with the provisions of this ordinance and post the text of this notice. Failure to comply with this section shall be construed a violation of this ordinance and, in addition, shall be grounds for suspensions, revocation, or termination of the business license or registration.

For more information, please contact: Constituent Services at 505-955-6949 Email: [constituentservices@santafer](mailto:constituentservices@santafer)

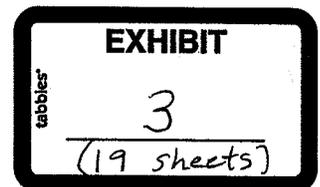
EXHIBIT

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INDEX TO FEDERAL CONTRACT CLAUSES

Federal Contract Clause

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**5. SEISMIC SAFETY REQUIREMENTS**

**42 U.S.C. 7701 et seq. 49  
CFR Part 41**

**Seismic Safety**

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

\_\_\_\_\_ Signature of Contractor's Authorized Official

\_\_\_\_\_ Name and Title of Contractor's Authorized Official

\_\_\_\_\_ Date

6. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.  
49 CFR Part 18

**Energy Conservation**

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

\_\_\_\_\_ Signature of Contractor's Authorized Official  
\_\_\_\_\_ Name and Title of Contractor's Authorized Official  
\_\_\_\_\_ Date

7. CLEAN WATER REQUIREMENTS

33 U.S.C. 1251

**Clean Water**

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

\_\_\_\_\_ Signature of Contractor's Authorized Official  
\_\_\_\_\_ Name and Title of Contractor's Authorized Official  
\_\_\_\_\_ Date

## 11. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325  
18 CFR 18.36 (i)  
49 CFR 633.17

The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
7. FTA does not require the inclusion of these requirements in subcontracts.

### Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<u>I State Grantees</u>  a. Contracts below SAT (\$100,000)  b. Contracts above \$100,000/Capital Projects	None  None unless non-competitive award	Those imposed on state pass thru to Contractor	None  Yes, if non-competitive award or if funded thru 5307/5309/5311	None  None unless non-competitive award	None  None unless non-competitive award	None  None unless non-competitive award
<u>II Non State Grantees</u>  a. Contracts below SAT (\$100,000)  b. Contracts above \$100,000/Capital Projects	Yes <sup>3</sup>  Yes <sup>3</sup>	Those imposed on non-state Grantee pass thru to Contractor	Yes  Yes	Yes  Yes	Yes  Yes	Yes  Yes

\_\_\_\_\_ Signature of Contractor's Authorized Official  
 \_\_\_\_\_ Name and Title of Contractor's Authorized Official  
 \_\_\_\_\_ Date

12. FEDERAL CHANGES

49 CFR Part 18

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date

14. CLEAN AIR

42 U.S.C. 7401 et seq  
40 CFR 15.61  
49 CFR Part 18

**Clean Air**

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date

19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

**No Obligation by the Federal Government.**

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date

20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS  
AND RELATED ACTS

31 U.S.C. 3801 et seq.  
49 CFR Part 31 18 U.S.C. 1001  
49 U.S.C. 5307

**Program Fraud and False or Fraudulent Statements or Related Acts.**

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

\_\_\_\_\_ Signature of Contractor's Authorized Official  
\_\_\_\_\_ Name and Title of Contractor's Authorized Official  
\_\_\_\_\_ Date

## 21. TERMINATION

49 U.S.C. Part 18  
FTA Circular 4220.1E

**a. Termination for Convenience (General Provision)** The City of Santa Fe may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to City of Santa Fe to be paid the Contractor. If the Contractor has any property in its possession belonging to the City of Santa Fe, the Contractor will account for the same, and dispose of it in the manner the City of Santa Fe directs.

The City of Santa Fe may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to City of Santa Fe to be paid the Contractor. If the Contractor has any property in its possession belonging to the City of Santa Fe, the Contractor will account for the same, and dispose of it in the manner the City of Santa Fe directs.

**b. Termination for Default [Breach or Cause] (General Provision)** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the City of Santa Fe may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the City of Santa Fe may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the City of Santa Fe that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the City of Santa Fe, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

**c. Opportunity to Cure (General Provision)** The City of Santa Fe in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

The City of Santa Fe in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to City of Santa Fe's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from City of Santa Fe setting forth the nature of said breach or default, City of Santa Fe shall

have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude City of Santa Fe from also pursuing all available remedies against Contractor and its sureties for said breach or default.

**d. Waiver of Remedies for any Breach** In the event that City of Santa Fe elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by City of Santa Fe shall not limit City of Santa Fe's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

In the event that City of Santa Fe elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by City of Santa Fe shall not limit City of Santa Fe's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

**e. Termination for Convenience (Professional or Transit Service Contracts)** The City of Santa Fe, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

The City of Santa Fe, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

**f. Termination for Default (Supplies and Service)** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the City of Santa Fe may terminate this contract for default. The City of Santa Fe shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the City of Santa Fe may terminate this contract for default. The City of Santa Fe shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

**g. Termination for Default (Transportation Services)** If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the City of Santa Fe may terminate this contract for default. The City of Santa Fe shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the City of Santa Fe may terminate this contract for default. The City of Santa Fe shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the City of Santa Fe, protect and preserve the goods until surrendered to the

Recipient or its agent. The Contractor and City of Santa Fe shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City of Santa Fe.

**h. Termination for Default (Construction)** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the City of Santa Fe may terminate this contract for default. The City of Santa Fe shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the City of Santa Fe may terminate this contract for default. The City of Santa Fe shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. the contractor, within [10] days from the beginning of any delay, notifies the City of Santa Fe in writing of the causes of delay. If in the judgment of the City of Santa Fe, the delay is excusable, the time for completing the work shall be extended. The judgment of the City of Santa Fe shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

**i. Termination for Convenience or Default (Architect and Engineering)** The City of Santa Fe may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The City of Santa Fe shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

The City of Santa Fe may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The City of Santa Fe shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

**j. Termination for Convenience of Default (Cost-Type Contracts)** The City of Santa Fe may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of the City of Santa Fe or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the City of Santa Fe, or property supplied to the Contractor by the City of Santa Fe. If the termination is for default, the City of Santa Fe may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the City of Santa Fe and the parties shall negotiate the termination settlement to be paid the Contractor.

The City of Santa Fe may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of the City of Santa Fe or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the City of Santa Fe, or property supplied to the Contractor by the City of Santa Fe. If the termination is for default, the City of Santa Fe may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the City of Santa Fe and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the City of Santa Fe, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the City of Santa Fe determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the City of Santa Fe, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date

22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

49 CFR Part 29  
Executive Order 12549

**Suspension and Debarment**

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the City of Santa Fe. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City of Santa Fe, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

\_\_\_\_\_ Signature of Contractor's Authorized Official  
\_\_\_\_\_ Name and Title of Contractor's Authorized Official  
\_\_\_\_\_ Date

## 24. CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000  
42 U.S.C. § 6102, 42 U.S.C. § 12112  
42 U.S.C. § 12132, 49 U.S.C. § 5332  
29 CFR Part 1630, 41 CFR Parts 60 et seq.

The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

## 25. BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18  
FTA Circular 4220.1E

### Disputes

Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the City of Santa Fe Attorney's Office. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the City Attorney. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the authorized representative of the City of Santa Fe Attorney's Office shall be binding upon the Contractor and the Contractor shall abide by the decision.

### Performance During Dispute

Unless otherwise directed by the city of Santa Fe, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

### Claims for Damages

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

### Remedies

Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City of Santa Fe and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the City of Santa Fe is located.

### Rights and Remedies

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City of Santa Fe, (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

\_\_\_\_\_ Signature of Contractor's Authorized Official

\_\_\_\_\_ Name and Title of Contractor's Authorized Official

\_\_\_\_\_ Date

28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

Disadvantaged Business Enterprises

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 3.9 %.
- b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as City of Santa Fe deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the concurrent with and accompanying an initial proposal:
1. The names and addresses of DBE firms that will participate in this contract;
  2. A description of the work each DBE will perform;
  3. The dollar amount of the participation of each DBE firm participating;
  4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
  5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
  6. If the contract goal is not met, evidence of good faith efforts to do so.
- Bidders/offerors must present the information required above with initial proposals. (see 49 CFR 26.53(3)). The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the City of Santa Fe. In addition, is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.
- e. The contractor must promptly notify City of Santa Fe, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of City of Santa Fe.

\_\_\_\_\_ Signature of Contractor's Authorized Official  
\_\_\_\_\_ Name and Title of Contractor's Authorized Official  
\_\_\_\_\_ Date

30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1E

**Incorporation of Federal Transit Administration (FTA) Terms**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E and are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City of Santa Fe requests which would cause City of Santa Fe to be in violation of the FTA terms and conditions.

\_\_\_\_\_ Signature of Contractor's Authorized Official  
\_\_\_\_\_ Name and Title of Contractor's Authorized Official  
\_\_\_\_\_ Date